

July 16, 2020

Hon. Aaron Michlewitz, Chair, Ways & Means Committee
Hon. Claire Cronin, Chair, Judiciary Committee
House of Representatives
Commonwealth of Massachusetts
24 Beacon Street
Boston MA 02133
Testimony.HWMJudiciary@mahouse.gov.

Re: S. 2820

Dear Representatives:

Tuesday the Senate approved, after an exceptional 17 hours of debate, S. 2820, a thoroughgoing reform of policing in the Commonwealth of Massachusetts. All eyes now turn to the House. I am writing to ask you to approve legislation that that matches – and, if possible, exceeds – the reforms made in the Senate Bill.

The going was tough in the Senate. It will be tough in the House as well. But at this moment in our history, we have to act. The embedded racism that shames our society is not just a matter of policing, or even of the operation of the criminal justice system. It seeps into every nook and cranny of our lives together. Nevertheless, it is no accident that police behavior has triggered waves of protest. This is where the racism of our society is most tangible. We must start here, even though we should not end here.

What the police do, they do on our behalf. We act through them. And we have to accept that some policing in our Commonwealth, and our country, dishonors us. It is time to put an end to that. Doing so is an essential first step on a long and even more arduous process of healing the wounds of four centuries of American history. We can no longer pretend to be a great country until we pluck this beam from our eye.

Many police officers in Massachusetts already get it. They have cooperated on community-based initiatives and show themselves every day to be generous and professional individuals. It is on the good will of such officers that we must build.

To some extent, the problem is one of setting forth clear rules of behavior and enforcing them. The Senate bill makes significant progress in this regard. It bans chokeholds and other deadly uses of force except in cases of imminent harm. It also clarifies qualified immunity for excessive use of force and establishes a standards and accreditation committee to standardize certification and discipline police officers.

The problem also has to do with rethinking what we wish police officers to do. The burden of policing often falls on impoverished communities of color. When members of those communities fear their protectors more than the people from whom they are being protected, it is clear that we have gone off the tracks. Here, the issue cannot be ascribed to a handful of bad actors. The problem is that the police mission is ill-conceived and the police are not provided with the training and support they need to do the job we as citizens are asking them to do.

The Senate bill addresses this by expanding community-based solutions to crisis intervention and jail diversion. It also requires new police training on de-escalation tactics and the complexities of race and prohibits racial profiling.

Some will tell you the Senate bill goes too far. I wish it went farther. I would encourage you, for example, to consider restricting qualified immunity still further or perhaps eliminating it. I do not believe that the loss of qualified immunity would harm officers who in good faith make hard decisions in tight situations. Juries in the Commonwealth understand the difficulties that such officers face. Qualified immunity has, however, come to be an essential support of a culture that is ultimately inconsistent with the role we would like the police to play. I would also encourage you to consider whether some of the duties that now fall on the police might be better done by other institutions, working in cooperation with the police. And finally, I would encourage you to think more about what the police need to help them succeed at the mission we wish to entrust to them. Training is part of it, but only a part. There is a question of culture, and behind that a question of providing support for officers who inevitably must function in a sometimes violent world in which society's expectations are unclear. The American military has in recent years also experienced such stress, and progress has been made in providing the mental health and other support that many soldiers need. We might wonder whether resources should be devoted to similar programs designed to support police officers.

The Senate bill is a firm first step in addressing an important part of the problem that the killing of George Floyd and the burden of covid 19 have put in shocking relief. Beyond policing is a fundamentally unjust criminal justice system, and beyond that is the influence of racism, past and present, in housing, education, social services, and health care. This first step needs to be taken, and I hope the House will join the Senate in taking it.

But after that there is so much more to do.

Respectfully,

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